

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,)	Case No. CR09-0084-MJP
)	
Plaintiff,)	
)	DEFENDANT DAVID SOBOL'S
v.)	SENTENCING MEMORANDUM
)	
DAVID SOBOL,)	
)	Sentencing Date: 12/04/2009 at 3:00 p.m.
Defendant.)	

Introduction

David Sobol comes before this Court at the age of forty for sentencing for the first time in his life. He will stand, ashamed and remorseful, before Your Honor and before his family and the community. David is loved as a father, son, brother, and cherished friend. *See* Letters attached as Exhibits 1 and 2. He entered a guilty plea to one count of Conspiracy to Commit Bank, Mail and Wire Fraud with an agreed loss amount of more than \$2.5M and less than \$7M, which was also adopted by U.S. Probation. PSR ¶ 41.

We submit that the Total Offense Level is 21 (BOL 6, + 18 for loss amount, - 3 for acceptance of responsibility), and combined with Criminal History Category I (0 points), the advisory guidelines range is 37 to 46 months in custody. After consideration of the Section 3553(a) factors, we respectfully urge this Court to impose a sentence of no more than 18 months

1 in custody, with credit for the 3 ½ months in custody at the FDC and 5 months of electronic
3 home detention he has already served. Defense respectfully recommends that a sentence of
5 probation that requires 12 months custody in a community corrections facility (halfway house) is
7 more appropriate than a straight custodial sentence of 18 months. First, if sentenced to 18
9 months in prison, with good time and pretrial custody credit, Mr. Sobol would serve about
11 another 12 ½ months. Second, BOP has the authority to release inmates early to community
13 corrections facilities and would very likely release Mr. Sobol to a halfway house for the final six
15 months of his sentence. Finally, if David Sobol can serve the entire 12 months at a halfway
17 house he will be able to continue looking for employment and is likely to secure employment
19 sooner. U.S. Pretrial Services, in its RSR to the Court has reported that David has been involved
21 in their job training program. Once employed, he can begin paying restitution. He would also be
23 required to contribute to the cost of his stay at the halfway house, which would reduce the cost to
25 the community of punishing him. Such a sentence also would result in less punishment for his
27 young children. The community corrections facilities are strictly run, and David would be
29 permitted to leave only to work. While defendants who have substance abuse issues may be at
31 greater risk of relapsing with a halfway house placement as opposed to a secure facility, David
33 does not have a substance abuse issue. PSR at ¶ 66.

37
39 Since his arrest, David has complied fully with all requirements imposed by the BOP, the
41 U.S. Attorney's Office, the Pretrial Services Office and, not least, this Court. Given the severity
43 of the life-long consequences of this felony conviction and the impact that the large amount of
45 restitution that he will be required to pay will have on his children's and his standard of living, a
47 lengthier prison sentence would be greater than necessary and would defeat some of the stated
49 goals of sentencing.

1 Defense disagrees with the assertion in the last sentence in ¶ 89 of the PSR that a
 3 minimum term of the range in this case must be satisfied by imprisonment. Probation ignores
 5 the current state of the law, as defined by the Supreme Court in *United States v. Booker*, 543
 7 U.S. 220, 245, 128 S. Ct. 586, 597 (2005) (the guidelines are merely that – guidelines, advisory
 9 and not binding); *Gall v. United States*, 552 U.S. 38, 128 S. Ct. 586, 602 (2007) (affirming non-
 11 guidelines sentence as reasonable); *Kimbrough v. United States*, ___ U.S. ___, 128 S. Ct. 558,
 13 570, 169 L.Ed.2d 481 (2007) (guidelines factor may not be given more weight than any other
 15 factor and sentencing judges may vary from advisory range based solely on policy
 17 considerations, even based on disagreement with the policy underlying the suggested range); and
 19 *Rita v. United States*, 551 U.S. 338, 127 S. Ct. 2456, 2465 (2007) (district court may consider
 21 arguments that the advisory range fails to reflect the factors set forth in 18 U.S.C. § 3553(a)).
 23

25 The Court spoke again this year in *Nelson v. United States*, 555 U.S. ___, ___ S. Ct. ___
 27 (2009):

29 Our cases do not allow a sentencing court to presume that a sentence within the
 31 applicable Guidelines range is reasonable. In *Rita* we said as much, in fairly
 33 explicit terms: “We repeat that the presumption before us is an *appellate* court
 35 presumption, ... [T]he sentencing court does not enjoy the benefit of a legal
 37 presumption that the Guidelines sentence should apply.” 551 U.S. at 351. And in
 39 *Gall v. United States*, we reiterated that, 552 U.S. ___ (2007), we reiterated that
 41 district judges, in considering how the various statutory sentencing factors apply
 43 to an individual defendant, “may not presume that the Guidelines range is
 45 reasonable.” *Id.* at ___ (slip op., at 11-12).

47 In this case the Court of Appeals quoted the above language from *Rita* but
 49 affirmed the sentence anyway after finding that the District Judge did not treat the
 Guidelines as mandatory. That is true, but beside the point. The Guidelines are
 not only *not mandatory* on sentencing courts; they are also not to be *presumed*
 reasonable. ... [Here] the sentencing judge ... did apply a presumption of
 reasonableness to Nelson’s Guidelines range. Under our recent precedents, that
 constitutes error.

Nelson, 555 U.S. at ____.

1 The law gives the Court wide latitude and enormous discretion to consider all of the
 3 factors set forth in 18 U.S.C. Section 3553 in fashioning a just sentence for the flawed human
 5 being who stands before Your Honor. Section 3553(a) requires a Court to fashion a sentence
 7 that is “sufficient, but not greater than necessary to comply” with these objectives:

- 9 (a) to reflect the seriousness of the offense, to promote respect for the law, and to provide
- 11 just punishment for the offense,
- 13 (b) to afford adequate deterrence to criminal conduct,
- 15 (c) to protect the public from further crimes of the defendant,
- 17 (d) to provide the defendant with needed educational or vocational training, medical care
 or other correctional treatment in the most effective manner.
 18 U.S.C. Section 3553(a)(2).

19 Section 3553(a) further directs the Court to consider the nature and circumstances of the
 21 offense, the history and characteristics of the defendant, the kinds of sentences available, the
 23 need to avoid unwarranted sentencing disparity and the need to provide restitution. Moreover,
 25 punishment comes in many forms and time in custody is merely one. In *United States v. Autery*,
 27 555 F.3d 864 (9th Cir. 2009), the Court of Appeals affirmed as substantively reasonable a
 29 sentence of probation for a defendant convicted of possession of child pornography, whose
 31 advisory guidelines range was forty-one to fifty-one months in prison. In affirming the sentence,
 33 the Ninth Circuit observed that a sentence of probation with various conditions restricting Mr.
 35 Autery’s liberty *is* punishment, and that such a sentence does promote respect for the law. *Id.* at
 37 875.

41 **The Offense, Respect for the law, and Just Punishment**

43 A probationary sentence of five years that includes the condition of 12 months
 45 incarceration at a community corrections facility, with the conditions set forth in the PSR, would
 47 further the goals of just punishment, deterrence and rehabilitation by helping David Sobol re-
 49 establish himself in the community sooner, giving him a greater chance of paying all the

1 restitution he will owe. Such a sentence would also promote respect for the law by not imposing
3 an overly harsh and formulistic sanction on a first-time offender whose post-offense conduct
5 shows he has already been deterred from future crimes. David's life prior to his involvement in
7 this offense demonstrates his pro-social nature and empathetic character. The attached letters
9 from family members (Ex. 2) and friends (Ex. 1) describe many acts of kindness and compassion
11 by David towards others. For example, a friend, Sophia Feist, describes how David lent her
13 money years ago when she "was in a very dire financial situation" and never asked her to repay
15 the loan although she eventually did repay it. Ex. 1 (fourth letter).

19 Defense acknowledges the offense conduct was serious. The sum of several individuals'
21 actions unfortunately increased the damage done. Unindicted coconspirators also caused harm.
23 Indeed, some of the banks who come forward now in sheep's clothing were complicit. Before
25 the music died, the banks were realizing large profits and paying large commissions to their
27 employees for funding "liar loans." Banks such as WAMU were unhesitating in jumping on the
29 "liar loans" wagon. *See* Alla Sobol's Sentencing Memorandum at 11, lines 3-15. The bank's
31 supervisory employees used lax standards because they believed the real estate market would
33 continue to escalate (how many people at the height of the real estate market commented that
35 nobody could make more land so of course prices would continue to rise) and they intended in
37 some instances to sell the loans to another financial institution. *See* Government's Sentencing
39 Memorandum Re: David Sobol at 15, lines 15 -20 (describing "relaxed loan underwriting
41 standards"). AUSA Carl Blackstone has commented that if the banks had been diligent this
43 fraud would not have been possible. For example, the banks did internal appraisals of the real
45 property and would charge a fee for these appraisals, surely they would have recognized the
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1 inflation in appraisals offered by the loan officer defendants in this case and would have rejected
3 them had they not been in such a rush to fund loans.

5 David Sobol did not know anything about the business of mortgage loans until he married
7 Alla Sobol. He worked for fourteen years at Godfather's Pizza, until late 2004, PSR at 73, and
9 worked for seven of those fourteen years (from 1997 through 2004) at an import-export business
11 specializing in food safety. PSR at 72. After he met Alla she encouraged him to get involved in
13 real estate sales and he obtained his real estate agent's license in October 2005. She later
15 introduced David to codefendant Vlad Baydovskiy and she and Mr. Baydovskiy recruited him to
17 be one of the operators of Emerald City Escrow. PSR at 24-25. David became acquainted with
19 all of his codefendants, other than Ms. Thorpe, whom he never met, through Alla.

23 The government claims that David worked as a real estate agent for "a couple of years
25 before starting Emerald City Escrow." Govt's Sentencing Memorandum at 16, lines 19-20. He
27 did not. He began working as a real estate agent in October 2005, when he became licensed and
29 began to work as an independent contractor with Skyline Properties. PSR at 71. Emerald City
31 began operating in February 2006. PSR at 25. David Sobol had been a real estate agent for a
33 little over four months when Emerald City began operating. Moreover, most real estate agents
35 have limited knowledge of escrow operations, and David certainly did. All in a proffer stated
37 that only Donata knew at the start of escrow "how to do HUD[s] and no – nobody else did."
39 (Govt. Bates No. JNKS_002158) The prosecutor asked if David had been in that business before
41 and Alla replied: "Never, he didn't even know what yields [spread premium], I mean, he had no
43 idea." (Govt. Bates No. JNKS_002158)

47 Vlad and Alla recruited David to become an owner/operator of Emerald City Escrow by
49 explaining to him that Vlad's wife, Donata Baydovskiy aka Neta Brenner, had escrow

1 experience, having worked at escrow companies from late 2002 (including at Escrow Authority,
3 a company whose principals have been indicted in *United States v. Anderson, et al.*, CR08-212-
5 RAJ) and Stewart Title. She had also taken two courses on escrow at Bellevue Community
7 College (Escrow Advanced 1 and 2), according to the resume she proffered at the time Emerald
9 City Escrow was formed. Vlad also enticed David to work at Emerald City Escrow by
11 explaining to him that an attorney, J.K., would be the actual escrow agent who would hold the
13 state license. RCW 18.44.021 requires persons acting as escrow agents to be licensed by the
15 state but subsection 2 of that statute exempts from the special licensing requirement: “Any
17 person licensed to practice law in this state while engaged in the performance of his or her
19 professional duties.” Vlad explained that J.K. would be the official escrow agent who would
21 ultimately supervise all closings at Emerald City.
23

25 It is not entirely clear why the government chose not to indict J.K. without whose law
27 license the indicted defendants could not have caused Emerald City to be formed and to operate.
29 According to the government’s Fraud Book, Ex. A to Declaration of James C. Vach Re: Lender
31 Loss, Dkt. # 211, Attachment 1, J.K. was the “Escrow Agent” i.e., the person who closed five of
33 the loans that contained fraud (Exhibits 27D, 27F, 27KK, 27Y, 27FF). J.K. also received some
35 of the fraud proceeds because he was paid a salary by Emerald City. He also received free rent
37 for his law practice which he ran from the Emerald City offices for a period of time. He
39 admitted under oath in a civil deposition (relating to a civil lawsuit against J.K. and some of the
41 defendants) that he was the person responsible for managing the escrow and the person
43 responsible for seeing that funds were properly disbursed. (Govt. Bates No. JNKS_001307)
45

47 In the initial months of Emerald City’s operations, David looked to Donata and J.K. for
49 guidance and training. Alla stated in a proffer that because Donata had experience working in

1 escrow and because David had none (“he didn’t even know what a HUD was”), Donata “was
 3 supposed to train him and they were supposed to run escrow together.” (Govt. Bates No.
 5 JNKS_002151) David was initially tasked with ordering office equipment and supplies. He also
 7 did marketing. Emerald City had many clients other than Kobay/Nationwide. PSR at ¶ 14 (final
 9 sentence). David came to understand, however, that he was facilitating fraud and he continued to
 11 do so. For that failure, he has suffered severe consequences and faces even more severe
 13 consequences. He also feels ashamed for failing his family and himself.

15 David Sobol closed seven loans that contained fraud according to the government’s Fraud
 17 Book, only two more than J.K. *See* Ex. A to Vach Decln. at Dkt. # 211, Attachment 1. The
 19 loans listed as being closed by David are Exhibits 7A, 7E, 13F, 27C, 27S, 27T and 50H. The last
 21 loan that David closed that is included in the Fraud Book closed on January 11, 2008 – over a
 23 year and three months prior to his arrest. The earliest is October 19, 2006 (Exhibit 7E on Ex. A
 25 to Vach Decln.). In contrast, Donata (referred to as Neta Brenner on the Fraud Book) closed
 27 **forty** loans that contained fraud, over a time period ranging from June 5, 2006 (Exhibits 25I and
 29 25G on Ex. A to Vach Decln.) to September 29, 2008 (Exhibit 44C on Ex. A to Vach Decln.).

31 In summary, David trusted others, primarily Vlad, Alla, Donata and J.K. to instruct him.
 33 He should have stopped when he realized he was being instructed to cross the line into
 35 misrepresentations. He did not. He is being punished for his crime by being convicted of a
 37 federal felony for life, losing important civil rights (which as a naturalized American citizen he
 39 cherished, such as serving as a juror – he has served in the past and received a summons last
 41 week, which he had to return indicating that he is now disqualified, and of course the right to
 43 vote), losing his reputation in the community and his privacy, losing his ability to be present for
 45 his children, being devastated financially, losing his liberty by incarceration at the FDC and
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1 continued EHM as well as strict supervision conditions, losing his ability to make decisions
3 about how to live his life. And he will accept this Court's judgment as to additional punishment.

5 **Loss Amount**

7 It is a fair observation that the loss amount in this case is inflated because the crash in real
9 property prices was caused by many factors beyond the control of these defendants, market
11 forces affected by the larger United States economy and even the global economy as well as by
13 governmental policy that let a largely unregulated mortgage industry fund very risky loans. And
15 yet the loss amount accounts for a large 18-level increase to the base offense level pursuant to
17 U.S.S.G. Section 2B1.1(b)(1), or in other words "is a critical determinant of the length of a
19 defendant's sentence." *United States v. Rutkoske*, 506 F.3d 170, 179 (2d Cir. 2007).

23 The Second Circuit Court of Appeals, in *Rutkoske*, reversed a sentence in which the loss
25 amount was calculated pursuant to U.S.S.G. Section 2F1.1(b)(1) (relating to securities fraud).
27 The Court of Appeals held that a district court must determine the extent to which a defendant's
29 fraud, as distinguished from market or other forces, caused shareholders' losses by using the test
31 set forth in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005). *Rutkoske*, 506 F.3d at
33 _____. The task requires a reasonable estimation of loss amount by disentanglement of the
35 underlying value of the real property, inflation of that value due to the fraud and deflation of that
37 value due to unrelated market forces. *Id.* at _____. This reasoning applies to mortgage fraud as
39 well as securities fraud.

41
43 The Standard & Poor's/Case-Shiller home-price index of house prices in 20 major cities
45 is 30 percent below its peak in April 2006. See Seattle Times article dated November 24, 2009
47 attached to this Memorandum as Exhibit 3. A sentence of imprisonment below the advisory
49 guidelines range is justified in part because the large loss amount is attributable to market forces

1 beyond the control of these defendants. The current appraisals on properties that the banks still
3 hold securitized interest in are coming in very low because market conditions have changed
5 dramatically since the loans were funded. The government and probation officer agree that the
7 advisory guidelines custody range is simply too high to constitute a reasonable sentence for
9 David.

11 The Newcastle property that is listed in the PSR at ¶ 29 as a representative transaction
13 reflects the dramatic increase in property values between 2005 and 2007. Alla Sobol purchased
15 the undeveloped lot that eventually became this residence in a new development prior to her
17 marriage to David. She then transferred ownership of the residence to David via quit-claim deed
19 prior to the sale to Camie Byron. Alla locked in the purchase price of \$669,950 by entering into
21 a Purchase and Sale Agreement in August 2005, PSR at ¶ 30, almost two years before the real
23 estate market in the greater Seattle area peaked in May 2007. *See* Ex. 3 to this Memorandum
25 (Seattle Times article at top p.2). Ms. Byron has told the government that the \$1,000,000 sales
27 price that she agreed to in August 2007 was, she believed, the fair market value for this residence
29 at the time. Ultimately the loss amount sustained by a bank on this residence is \$143,113. PSR
31 at ¶ 34. A tragic aspect of this case is that the defendants could have realized profits from real
33 estate investments without committing fraud.
35

37 Neither David nor Alla, however, engaged in the type of fraud in which “a significant
39 portion of the loan proceeds were diverted to the co-defendants without the knowledge of the
41 borrowers, leaving the borrower with less proceeds and an overvalued property.” Govt’s
43 Sentencing Memorandum Re: Alla Sobol at 19, lines 8-10. Alla did not structure such loan
45 deals and David did not close such loans. An example of the type of transaction which the
47 government refers to is the transaction which forms the factual basis of Vlad’s Plea Agreement.
49

1 Dkt. # 186. Pages 9 to 11 contain some of the facts regarding the transaction involving a house
3 in Medina, WA ostensibly purchased by M.B. Page 10 at lines 22-23 refers to instructions to the
5 lender coming from “another member of the conspiracy at Emerald City Escrow.” AUSA
7 Oesterle has admitted in writing to counsel that the government has no evidence that David
9 Sobol participated in the closing of this transaction. The government’s Fraud Book, Ex. A to
11 Vach Decln., Dkt. # 211, lists this property as Ex. No. 21A and the escrow agent is listed as Neta
13 Brenner. There is credible evidence that in fact neither Alla nor David knew about the
15 transaction until well after the fact (Victor Kobzar and Camie Byron have both told the
17 government this).

21 It is ironic that Vladimir Baydovskiy, who created the fraudulent scheme and was its
23 most devoted adherent and should therefore be ordered to pay the most restitution, will probably
25 end up paying less restitution than the other defendants because he will likely serve a longer
27 prison sentence. A positive result of this prosecution is that David has learned never to
29 compromise his personal integrity because someone else suggests he should do so to make
31 money. All of the money he earned in the fraud was seized by the government and he is in
33 serious debt. The sentencing memorandum filed by Alla suggests that the government seized
35 only her funds. The government’s forensic analysis of the Sobols’ assets shows that the money
37 seized was community property. The only seized asset that David has asked the government to
39 return is approximately \$29,000 in a UGTMA account for which his daughter is the beneficiary
41 and of which his ex-wife, Renata Sobol, is the custodian. David began a custodial account for
43 his daughter prior to his marriage to Alla and the money he accumulated was incorporated into
45 this account.

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1 **Role Adjustment**

3 David Sobol objects to a 3-level increase for allegedly being a supervisor of criminal
 5 activity. Neither U.S. Probation nor the government has told counsel who David allegedly
 7 supervised in criminal activity. There were two other persons who did close some Emerald City
 9 files, whose initials are H.F. aka H.M. and J.V. Vlad recruited J.V. to work at Emerald City and
 11 both he and Donata told David that she would not need supervision because she had prior
 13 experience working in escrow. After J.V. left, the Emerald City principals agreed to hire H.F.
 15 aka H.M., with whom Alla had previously worked when she was at Central Banc. Again, she
 17 knew how to close loans and David did not supervise her work. The closing instructions from
 19 ING Bank to Emerald City regarding a property on which H.F. aka H.M. was the unqualified
 21 borrower (23012 NE 189th St., Woodinville) was sent to the attention of Neta Brenner, not
 23 David. (Govt Bates No. ING_000689)

27 The government argues that because David managed the day-to-day office operations at
 29 Emerald City, the court should add 3 levels to his offense level pursuant to U.S.S.G. § 3B1.2.
 31 Govt's Sentencing Memorandum at 14, lines 1-10. The guidelines provide that a person's title is
 33 not controlling in determining whether a role adjustment is appropriate. U.S.S.G. § 3B1.2.,
 35 Application Note 4.

37 Application Note 4 further instructs the Court to consider the following factors in making
 39 such a determination: "the exercise of decision making authority, the nature of participation in
 41 the commission of the offense, the recruitment of accomplices, the claimed right to a larger share
 43 of the fruits of the crime, the degree of participation in planning or organizing the offense, the
 45 nature and scope of the illegal activity, and the degree of control and authority exercised over
 47 others." *Id.* David had no decision-making authority over Donata or J.K., much less over the
 49

1 Kobay/Nationwide defendants. In fact the loan brokers, i.e. Vlad, Victor, Alla and Camie,
3 exercised authority over the escrow defendants by structuring the fraud and telling the escrow
5 defendants how to create differing HUD statements. *See* Alla Sobol's Sentencing Memorandum
7 at 17, lines 1-2 ("loan officers drawing up escrow instructions inevitably provide some level of
9 direction to the escrow officers executing those directions"). Camie Byron in a proffer explained
11 that Alla took an active role at Emerald City. "Alla would tell David, you need to do X, Y, Z
13 and he did it So basically she would, she would stand there, a lot of times Alla did not do the
15 HUD's but she would be either standing over David's shoulder, over Neta's should [saying] and
17 do this, do that, change this, do that." (Govt Bates No. JNKS_002414)
19

21 While the government credits Alla, Camie and David for their forthright and honest
23 cooperation in the investigation, Alla points out that she has given the most proffers. Alla
25 Sobol's Sentencing Memorandum at 20, lines 16-23. That the government's investigators have
27 interviewed her so extensively corroborates her superior knowledge of the offense and her
29 extensive knowledge of other persons in the industry who are involved in fraud. David provided
31 all of the information he knew in one proffer session. He simply does not know as much as Alla
33 or Camie and is not as culpable. He was however honest and he is of course bound by his Plea
35 Agreement to cooperate fully (such as providing testimony for the government) at any time he is
37 requested to do so.
39

41 Donata much more frequently participated in closing transactions in which there was
43 fraud, as shown in the government's fraud book, closing forty versus seven of the fraudulent
45 loans. Ex. A to Vach Decln. at Dkt. # 211. David did not recruit any accomplices; he did not
47 recruit any straw buyers. The house purchases and sales made by the Sobols were all
49 orchestrated by Alla. David never claimed he had the right to a larger share of the fruits of the

1 crime, nor did he receive a larger share. Defense will prove prior to the restitution hearing that
3 Vlad received the largest share. David did not plan or organize the offense, rather he was
5 recruited by Vlad and Alla into working at the escrow company, in a business foreign to him.
7 During the conspiracy he did not understand the entirety of the scheme.

9 The scope of David's specific acts of illegal activity (as opposed to coconspirator acts
11 that he arguably reasonably should have foreseen) is quite small compared to all other
13 codefendants, other than Ms. Thorpe. David did not exercise authority over anyone else. Donata
15 independently of David and J.K. closed transactions brokered by Vlad, Victor Kobzar and Alla.
17 All three principals at Emerald City (David, Donata and J.K.) had signature authority over the
19 business and IOLTA accounts and all three disbursed funds from the accounts. After David and
21 J.K. closed Emerald City's operations in December 2008, Donata told authorities in 2009 that
23 David and J.K. did not have the authority to close Emerald City and that she did not agree to the
25 business's closing. An investigating police officer contacted Donata after David and J.K.
27 complained to the Bellevue Police Department about a fraudulent transaction that Vlad
29 purportedly used Emerald City Escrow to close **after** J.K. closed the business. During Bellevue
31 Police Department's investigation David also told the police where Emerald City Escrow's files
33 were and gave them the combination number to the lock at the storage unit. The police allowed
35 federal investigators to place a tracking device on David's car because they thought that he might
37 try to destroy Emerald City records. David did not destroy any records but in fact took steps to
39 preserve the records.
41
43

45 Given that the Court can increase the base offense levels of Vlad and Alla by only four
47 levels, a three-level increase for David creates an unfair disparity. Counsel understands that
49 probation is not going to apply a three-level increase to Donata's offense level for being a

1 manager/supervisor because she was not as actively involved during the day at Emerald City.
 3 This creates an unfair disparity between two defendants who share more similarities than
 5 differences: both were married to loan broker defendants, both were recruited by other
 7 defendants, both closed transactions and disbursed funds from Emerald City accounts as
 9 instructed by the loan brokers, and both profited from the fraud. It also ignores significant
 11 differences: David's last involvement in a transaction involving fraud was in January 2008,
 13 whereas Donata continued to work in escrow until her arrest in late March 2009. Emerald City
 15 Escrow had many clients (over 30) other than Kobay/Nationwide. "Emerald City closed
 17 mortgage lending transactions by entities other than Kobay and Nationwide that were not alleged
 19 to be part of the conspiracy herein." PSR at ¶ 14 (final sentence). The fact that David ordered
 21 office supplies for Emerald City and was present during business hours does not equate to him
 23 supervising criminal activity of others. Donata may have left the office earlier in the day but she
 25 also closed almost six times the number of fraudulent loans that David closed.
 27

29 **More than 10 Victims and Sophisticated Means**

31 David objects to the application of both enhancements to his base offense level
 33 (probation agrees that sophisticated means does not apply in this case). The government alleges
 35 that ten lenders have presented evidence of loss and therefore are victims. Govt's Sentencing
 37 Memorandum at 13, lines 19-28. Defense has asked the government about the purported loss
 39 claim by American Home Mortgage. The government's Losses from Lenders spreadsheet (Ex. B
 41 to Vach Decln. at Dkt. # 211, Attachment 2) does not include any dollar amount for loans held
 43 on 8245 NE 26th St., Medina by Amerian Home Mortgage (nos. 6 and 7 on spreadsheet). The
 45 government has not produced documents relating to loss calculations as to these loans. The
 47 government's investigation revealed that the second mortgage for \$350,000 funded on this
 49

property was actually originated by none of the defendants in this case and was closed by none of the defendants in this case. Moreover, this line of credit was paid in full according to the bank records obtained by the government. The government has the burden of proving more than 10 victims and has failed to do so.

David Sobol's History and Characteristics

David Sobol has benefitted from the love and support of his mother, Alla Katkov. PSR at ¶ 58. In her letter to this Court (Ex. 2, third letter) she expresses shock and disappointment at David's crime and explains that she raised him to be "proud to be American." She fled Soviet-controlled Ukraine with David and his estranged father because as a Jewish family they faced discrimination and hatred and would "be judged by their religion." Mrs. Katkov writes that David realizes his criminal behavior "is not the legacy he wants to leave his children."

While David loves and is loved by his mother, his sister, Regina and brother, Bertram (their letter is fourth in Ex. 2), he has also maintained a strong bond with his ex-wife, Renata Sobol, and her mother, Asiya Nikolayeva. Their letters to Your Honor are in Ex. 2, the first and the last, respectively. As David himself wrote in his letter to the Court, he has discovered who his true friends are. He wrote they have helped him "like they are still my family." Mrs. Nikolayeva writes: "We took David back into our home and into our lives during this difficult period, because I know that he is a good and decent person." Magistrate Judge Tsuchida joked during the hearing at which he ordered David's release on bond that he would have a harder task master perhaps than the Court or any detention center guard by being in his mother-in-law's home.

David's ex-wife Renata explains that she and David "were able to set our egos aside and reconcile as two civilized adults, and mainly two parents." (final letter in Ex. 2). She describes

1 David as an “amazing father.” She was abandoned by her own father (similar to David’s own
3 experience, see PSR at ¶ 60), and writes that her “heart is filled with true joy for the fact that my
5 daughter is blessed to have a dad like David.”

7 David’s letter to Your Honor is attached to the PSR. He apologizes to the Court, his
9 family and all persons he hurt. In acknowledging that he alone is responsible for finding himself
11 being sentenced for committing a crime, he hopes the Court can “see that this is not the person I
13 want to be and is definitely not how I was raised to be.” He wants Your Honor to know that he
15 is a good person at heart. He thanks those who have shown unwavering love and support during
17 this difficult time in his life and hopes that someday he can repay his debt to them. He expresses
19 his intention to become a contributing member of our community again. David vows that he will
21 never place himself in a situation again in which he must lose contact with V. and R. His
23 awareness of how precious his time with them is, how he can never regain the days he could not
25 spend with them will motivate him to redeem himself. “I want to redeem myself for my young
27 children so they can be proud of their father. I ask you for another chance to show that I can be
29 an honest and decent human being again.”

33 As noted in Alla Sobol’s Sentencing Memorandum at 23, lines 9-26, and at 24, lines 1-6,
35 David and Alla have both settled with ING Bank in case no. CV09-00124-TSZ. This settlement
37 does demonstrate an extraordinary acceptance of responsibility by David.

41 David is in early middle age, a factor which many studies of recidivism have shown
43 greatly decreases the risk of reoffending. David has no criminal history. Lack of criminal
45 history is not entirely accounted for by CHC I because “a defendant with minor criminal history
47 can still fall within Criminal History Level I.” *Autery*, 555 F.3d at 874. Therefore a district
49 court may properly consider complete lack of criminal history as a mitigating factor. *Id.* And

the district judge who sentenced Mr. Autery noted that he had no history of substance abuse, no instability or sociopathic attitudes, was motivated and intelligent and had the support of his wife and children. *Id.* The Ninth Circuit found such considerations entirely appropriate because: “Each of those attributes, in the reasonable judgment of the court, increases the likelihood that Autery can again become a productive, non-threatening member of free society, thus making more severe punishment less appropriate than if Autery lacked those characteristics.” *Id.* David also has these characteristics.

David Sobol’s post-offense behavior has demonstrated that he is already deterred from criminal behavior. The public will be adequately protected by having him serve a probationary sentence with conditions that severely restrict his autonomy and permit probation to monitor him closely. Indeed, in *Autery*, the Ninth Circuit noted that while a probationary sentence is itself a deterrent to future criminal conduct, a “further deterrent” was the sentencing judge’s admonition that any violations of probation conditions would result in a sentence of “the maximum penalty allowed by law.” *Id.* at 876. David understands that if he were to violate conditions, punishment would be swift and harsh.

The Need to Provide the Defendant with Correctional Treatment and the Need to Provide Restitution

These factors set forth in Section 3553(a) certainly weigh heavily in favor of a sentence of custody in a halfway house in lieu of total incarceration. The court must consider “the need to provide the defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner....” The Ninth Circuit has held that “the sole objective of § 3553(a)(2)(D) is not punishment, but the defendant’s rehabilitation.” *Autery*, 555 F.3d at 877. The sentence we advocate would punish David in the most effective, and most cost-effective, manner, while providing for David’s rehabilitation.

1 The need to provide restitution militates in favor of less incarceration since David Sobol
3 can not earn money to pay restitution while incarcerated.

5 **Disparity**

7 Finally, disparity, does not weigh in favor of a guideline range sentence for David. The
9 government writes that they anticipate “seeking a custodial term of no more than that sought for
11 Mr. Sobol” for Ms. Baydovskiy. Govt’s Sentencing Memorandum at 18, lines 14-15. As argued
13 in this Memorandum David’s participation in the fraud was less than Donata’s and he therefore
15 at the least deserves no greater custodial term than she does.

17 **Conclusion**

19 We respectfully ask this Court to impose five years of probation that includes a year of
21 custody in a community corrections facility, and the other conditions recommended by
23 probation. Such a sentence which would promote David’s rehabilitation and would constitute
25 sufficient punishment, while not greater punishment than necessary. Such a sentence, given all
27 of the other negative, life-long consequences this conviction is having on David’s life, is
29 certainly deterrence not just to David, but to others. David Sobol welcomes the support that
31 being on supervision will offer to him in his efforts to pay for his crime, by serving his sentence
33 and paying restitution, and by being present for his young children, whose need for him cannot
35 be overstated.
37
39

41 DATED this 2nd day of December 2009.

43 Respectfully submitted,

45 s/Catherine Chaney

Catherine Chaney, WSBA No. 21405

47 Attorney for David Sobol
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CERTIFICATE OF SERVICE

I certify under penalty of perjury that I filed this memorandum and the accompanying exhibits through ECF. ECF will provide notice to AUSAs James Oesterle and Carl Blackstone. I also emailed a copy of this memorandum to U.S. Probation Officer Andrew Lorenzen.

DATED this 2nd day of December, 2009. s/Catherine Chaney
Catherine Chaney